

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HILL COUNTRY BAKERY, LLC

Plaintiff,

- against -

I.J. WHITE SYSTEMS,

Defendant.
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: 11 CV 00751 (JFB) (ETB)
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: **AMENDED JOINT RULE 26(F)**
: **REPORT AND DISCOVERY PLAN**
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Pursuant to Fed. R. Civ. P. 26(f) and the Court's Order of February 25, 2011, Plaintiff Hill Country Bakery, LLC and Defendant I.J. White Systems, by and through their respective counsel, conferred over the contents of this report on March 18, 2011 and April 5, 2011, and hereby submit this Amended Joint Rule 26(f) Report and Discovery Plan:¹

1. Rule 26(f)(2): Initial Disclosures.

The parties have agreed to serve their Rule 26(a)(1)(A) initial disclosures by April 8, 2011.

2. Rule 26(f)(3): Subjects of Discovery.

The parties believe that the subjects of discovery will encompass all claims and defenses in the action. The parties intend to pursue both written discovery and discovery by way of deposition.

3. Rule 26(f)(3): Discovery Schedule.

Defendant agrees to produce all readily available documents, as provided by its client, along with a privilege log, by Friday, April 8, 2011, less any privileged material. Defendant will

¹ This Amended Joint Rule 26(F) Discovery Report and Plan does not alter the discovery cut-off date of the Report and Plan filed with the Court on March 31, 2011 (the "Original Report"). The only revisions to the Original Report set forth herein are the addition of 3 days time to the deadlines for: (i) the filing of the Amended Complaint; (ii) the filing of a response or answer to the Amended Complaint; (iii) the exchange of initial disclosures; and (iv) the deadline for amendment of pleadings.

commence production of these documents on a rolling basis commencing on Wednesday, March 30, 2011. Defendant further agrees to provide written responses to Plaintiff's First Request For Production To Defendant I.J. White Systems, dated February 10, 2011, by April 15, 2011.

The parties have further agreed to the following schedule:

- a. Plaintiff's Amended Complaint to be served by **April 8, 2011**;
 - b. Defendant's Answer or Response to any Amended Complaint or service of an Amended Answer to be served by **April 22, 2011**;
 - c. Defendant's production of documents to Plaintiff, along with a privilege log, due by **April 8, 2011** (Defendant reserves the right to supplement any production) and service of written responses to Plaintiff's Request for Production by **April 15, 2011**;
 - d. Service of written discovery requests including, but not limited to, interrogatories and/or requests for production of documents due from both parties by **April 30, 2011**;
 - e. The parties shall have the right to amend their respective pleadings and/or add additional parties to this dispute without leave of court until **May 13, 2011**;
 - f. All discovery, including all factual and expert discovery, to be completed by **September 30, 2011**;
 - g. Any dispositive motions made pursuant to Federal Rule 56 due by **October 31, 2011**, unless otherwise scheduled by the Court; and
 - h. Pretrial Order due by **November 30, 2011**, unless otherwise scheduled by the Court.
4. **Rule 26(f)(3): Discovery of Electronically Stored Information ("ESI").**

The parties agree to meet and confer about the scope of the ESI production, the format of any such production, and potential cost sharing arrangements depending upon the scope and expense of any requested information. The parties will undertake to reach an agreement memorializing the scope and format of ESI production. The parties will produce documents in native format and as they are kept in the ordinary course of business. Both parties reserve the

right to seek appropriate relief from the court for productions which fail to comply with the federal rules governing the production of evidence (electronic or otherwise).

5. Rule 26(f)(3): Claims of Privilege or Work Product.

The parties do not currently anticipate any particular issues regarding claims of privilege or protection of trial-preparation materials, and do not believe it is necessary for the Court to include any agreement regarding the same in an Order. The parties anticipate that they may each be required to produce certain confidential or proprietary information in the course of discovery. In light of the prospect that discovery of such information will be required, the parties have conferred about the terms of a confidentiality agreement and anticipate that they will submit a proposed confidentiality agreement and order for approval by the Court in the manner required by the rules.

6. Rule 26(f)(3): Limitations or Changes to Discovery.

The parties do not currently anticipate the need for the Court to impose limitations or changes to the rules regarding discovery. Defendant has tentatively identified as many as forty (40) fact witnesses, plus additional expert witnesses to be deposed before the discovery cut-off. Many of these witnesses will be non-parties. Plaintiff believes that this matter is not nearly as complex as Defendant would have the Court believe and will not warrant nearly as many depositions as Defendant may currently anticipate. Plaintiff reserves the right to object to any depositions noticed by Defendant that Plaintiff contends are unnecessary. Both parties reserve the right to seek to modify or enforce the applicable discovery limits should the need arise.

7. **Rule 26(f)(3): Other Orders.**

The parties do not believe that there is a need for additional orders by the Court at this time, but reserve the right to seek relief from the Court at a later time.

Respectfully submitted,

HAYNES AND BOONE, LLP
Attorneys for Plaintiff

COZEN O'CONNOR, LLP
Attorneys for Defendant

By: s/ Jonathan D. Pressment
Jonathan D. Pressment (JP-1819)
30 Rockefeller Plaza, 26th Floor
New York, New York 10112
(212) 659-7300
Jonathan.Pressment@haynesboone.com

By: s/David Y. Loh
David Y. Loh (DL-0460)
45 Broadway, 16th Floor
New York, New York 10006
(212) 509-9400
dloh@cozen.com

SO ORDERED:

4/11/11 — /s/ E. Thomas Boyle, U.S.M.J.

Hon. E. Thomas Boyle, U.S.M.J.

Dated: 